



An
Bord
Pleanála

Inspector's Report

ABP-306134-19

Development	House and associated works with new vehicular and pedestrian access from Crannagh Road.
Location	44, Rathfarnham Park, Dublin 14
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD19A/0296
Applicants	Loretto & Christy Keane
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party v Grant
Appellants	Gareth & Suzanne Fahey
Date of Site Inspection	19.02.2020
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site comprises an area of the rear garden of No. 44 Rathfarnham Park, a detached two-storey house, approx. 160 metres north east of the northern end of Main Street in Rathfarnham village.
- 1.2. The site has a boundary with Crannagh Road to the south and it shares its western and northern boundaries with No. 196 Rathfarnham Road and No. 42 Rathfarnham Park respectively. It comprises the grassed garden area of the western part of No. 44 Rathfarnham Park.
- 1.3. The site has a stated area of 0.027 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for a two-storey three-bedroom house and associated site works with a new vehicular and pedestrian access from Crannagh Road.
- 2.2. The proposed house has a stated floor area of 198.9sqm with a maximum indicated height of 7.75 metres though the general height of the structure is 6.69 metres. The proposed house has a contemporary flat roof design and is externally finished in brick.
- 2.3. In addition to standard planning application plans and particulars the application was accompanied by a 'Planning Submission Report' which relates to the services layout.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 15 no. conditions including conditions related to Irish Water connection, surface water drainage, construction practices, a restriction on the use of the house, external materials and payment of both a tree bond and development contributions.
- 3.1.2. Condition 4 states as follows;

'No development shall take place under this permission until the applicant, owner or developer has lodged with the Planning Authority for written agreement:

Revised plans that incorporate all of the following amendments-

The omission of the first floor window on the eastern elevation of bedroom 2.

The applicant, owner or development may consult with the Planning Authority in advance of lodging the required revised plans.

Reason: To protect the amenities of the area and in the interests of the proper planning and sustainable development of the area'.

3.2. **Planning Authority Reports**

3.2.1. The Planning Officer's report was the basis for the decision. The Planning Officer concluded that having regard to the provisions of the South Dublin County Council Development Plan 2016-2022 the proposed development would not adversely impact on the residential and visual amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

3.2.2. **Other Technical Reports**

Water Services – No objection subject to conditions.

Roads Department – A refusal is recommended on the grounds of overdevelopment of the site and health and safety issues regarding power lines across the proposed access.

Parks & Landscape Services Section – The Planning Report states a report was received which required the retention and protection of the tree in the grass verge.

3.3. **Prescribed Bodies**

Irish Water – No objection subject to conditions.

3.4. **Third Party Observations**

2 no. third-party submissions were received from Gareth and Suzanne Fahey, No. 194 Rathfarnham Road and Damian and Edith MacGarry, No. 196 Rathfarnham Road.

The issues raised are largely covered by the grounds of appeal with the exception of the following:

- The western site boundary wall is entirely within the property ownership of No. 196 Rathfarnham Road; not within the property ownership of No. 44 Rathfarnham Park.
- The house design is entirely out of keeping with house styles in the vicinity. In the absence of adequate indication of finishes or colours the overall appearance is unrelieved and monolithic.
- The sliding gate resembles the rusting gate of an industrial unit and is inappropriate in a residential setting.
- Construction should not damage the deciduous cherry trees within the boundary of No. 196.
- The drainage line on Crannagh Road adjacent to the site was constructed by the developers of the Crannagh Court apartment complex and as such is a private system.
- The development will block daylight/sunlight to the rear of No. 194.
- Concern expressed about impact on car parking in the area as a result of Bus Connects.

4.0 Planning History

None.

5.0 Policy Context

5.1. South Dublin County Council Development Plan 2016-2022

- 5.1.1. The site is in an area zoned 'Objective RES; To protect and/or improve residential amenity'. Residential development is permitted in principle under this objective.
- 5.1.2. Housing (H) Policy 17 states it is the policy of the Council to support residential consolidation and sustainable intensification at appropriate locations, to support

ongoing viability of social and physical infrastructure and services and meet the future housing needs of the County.

- 5.1.3. H17 Objective 3 – To favourably consider proposals for the development of corner or wide garden sites within the curtilage of existing houses in established residential areas, subject to appropriate safeguards and standards identified in Chapter 11 Implementation.
- 5.1.4. H17 Objective 5 – To ensure that new development in established areas does not impact negatively on the amenities or character of an area.
- 5.1.5. Section 11.3.2 (Residential Consolidation) (ii) (Corner/Side Garden Sites) sets out criteria that should be met such as being of a sufficient size, design (building line and roof profile), architectural language and dual frontage.

5.2. **Natural Heritage Designations**

- 5.2.1. The closest Natura 2000 site is South Dublin Bay and River Tolka Estuary SPA approx. 5.7km to the north east. The closest area of natural heritage designation is Grand Canal pNHA approx. 3.2km to the north.

5.3. **EIA Screening**

- 5.3.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, which is a fully serviced suburban location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The grounds of appeal are submitted by Gareth and Suzanne Fahey, No. 194 Rathfarnham Road. The main issues in the appeal can be summarised as follows:

- The house location has lesser impact on the applicants' house while having huge negative impact and encroaching onto the rear of No. 194 Rathfarnham Road.
- The applicants' garden is very large and if it was stepped back into this garden it would have less impact on the appellants.
- The proposed 198.9sqm house is very large relative to the .27 hectare site area.
- The house location will lead to overlooking. The proposed kitchen and patio will be parallel to the boundary wall and the window to Bedroom 2 on the first floor will completely encroach on privacy.
- The window of Bedroom 2 is the primary concern and it leads to direct overlooking. Bedroom 2 has windows to both east and west elevations. The planning authority ordered the removal of the east facing window which faces the applicants' own house because there was a 19 metres distances to it and the distance to No. 196 Rathfarnham Road was approx. 28 metres. The distance to the appellants' house was not noted or referenced even though No. 194 extends further to the rear than No. 196 and therefore the distance would be less.
- The planning authority noted that the property to the north has a long rear garden and would not be unduly impacted by the proposed house. The west side bedroom window to Bedroom 2 could have been relocated to the north elevation. The Bord is requested to review the size and position of this window with a view to moving it. The appellants met the applicants after the planning order was granted and the applicants would have no objection to the window being relocated to the northern elevation.
- It is noted that the Roads Department recommended a refusal of the application.
- The appellants query how Condition 3 (d) of the planning authority decision can be achieved on site given that a soakaway must be at least 5 metres from any building or structure and not within 3 metres of the boundary of the adjoining site.

6.2. Applicants' Response

6.2.1. The main points made can be summarised as follows:

- The proposed two-storey house has a general height of 6.69 metres which is lower than No. 44 Rathfarnham Park (8.81 metres) and No. 196 Rathfarnham Road (8.896 metres) and will therefore have no overbearing or negative impact on the established setting of these properties.
- The accepted standard for ensuring residential privacy and amenity is 22 metres between opposing first floor windows. The west facing window of Bedroom 2 is 28.9 metres from No. 196 Rathfarnham Road. The planning authority considered this acceptable and it ought to be permitted as it is in excess of the recommended minimum separation standard.
- There is no reason why a condition could not be included requiring the east facing window of Bedroom 2 to have opaque/frosted glazing and the Board is requested to consider this.
- The suggestion that windows be applied to the north side is dismissed as north facing windows provide little amenity or light and for this to be proposed at this stage would take away the third-party rights of the residents of No. 42 Rathfarnham Park.
- The applicants do not intend encroaching onto property outside their control.
- The house size is appropriate for the site, is not overdevelopment and accords with recommended standards for same.
- The Manager's Order asserts that the electricity lines are a normal construction consideration on any site and the curtilage is sufficient to cater for car parking requirements. The appellants are incorrect in their assertion that the Roads Section recommended a refusal based on health and safety grounds of the proposed access; what was raised was the potential for the removal of the tree in the public realm. No objection to same was raised in making the decision.
- Condition 3 (d) can be fully complied with as the condition requires compliance detail to be agreed with the Council.

- The planning authority is satisfied with the height, scale, design, mass and access arrangements proposed. It will not impact the character or setting of the area or have any impact on the residential amenity of neighbouring properties.

6.3. **Planning Authority Response**

The planning authority confirms its decision and the appeal raises no new issues.

7.0 **Assessment**

The main issues are those raised in the grounds of appeal and the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Impact on Adjacent Residential Amenity
- Overdevelopment
- Surface Water Disposal
- Appropriate Assessment

7.1. **Principle of Development**

- 7.1.1. The site is in an area zoned 'Objective RES; To protect and/or improve residential amenity' under the South Dublin County Council Development Plan 2016-2022. Residential development is permitted in principle under this zoning objective. The Plan states, in Housing Policy 17 and within H17 Objective 3, that residential consolidation and sustainable intensification at appropriate locations will be supported. The development of wide garden sites within the curtilage of existing houses in established residential areas will be favourably considered.
- 7.1.2. The site comprises part of a relatively large garden, with direct access onto the public road, and, therefore, I consider that the provision of an additional house on the site within an established residential area is acceptable in principle.

7.2. Impact on Adjacent Residential Amenity

- 7.2.1. The grounds of appeal refer to overlooking of No. 194 Rathfarnham Road.
- 7.2.2. There are first floor windows proposed to all four elevations. Overlooking to the south is not a concern as this overlooks the public road where additional passive surveillance is beneficial. There is a west elevation window to Bedroom 2 which is the primary basis for the grounds of appeal. This window is approx. 9 metres from the site boundary and directly overlooks the rear area of No. 196 Rathfarnham Road. It has a more oblique view of the appellants' property, No. 194. The planning authority permitted this window because it would be approx. 28.9 metres from the rear elevation of No. 196 which is greater than the guideline 22 metres. The east facing window to Bedroom 2 was omitted because it would be only 19 metres from the rear elevation of No. 44 Rathfarnham Park. There are also 2 no. north elevation windows proposed; a landing window approx. 6 metres from the boundary and the only window to Bedroom 3 approx. 7.5 metres from the boundary.
- 7.2.3. The applicants' response refers to the general residential amenity guideline of 22 metres between opposing above ground floor windows and the fact that the planning authority considered the proposed development to be acceptable.
- 7.2.4. Notwithstanding the 22 metres separation distances between opposing first floor windows, in the current application, first floor windows to the west, north and east elevations would directly overlook the rear private open spaces of the adjacent properties. I consider that a separation distance of approx. 9 metres to the west would lead to undue overlooking impact to the rear garden area of No. 196 in particular, and to a lesser extent to No. 194. To the north, while the landing window could be conditioned to have opaque glazing, I consider the window to Bedroom 3 results in undue overlooking to the rear garden area of No. 42 Rathfarnham Park. There is no other elevation this window could be relocated to and it is not appropriate to condition opaque glazing for the only window in a bedroom. The planning authority omitted the east elevation window to Bedroom 2 because of overlooking potential. This window is approx. 3 metres from the site boundary.
- 7.2.5. Having regard to the foregoing, I consider that residents' enjoyment of the private open space to the rear of their properties adjacent to the site would be unduly affected by overlooking potential from the proposed house and there is no appropriate condition

in relation to relocating the windows to different elevations or requiring opaque glazing that could be included to remove undue overlooking impact.

7.3. Overdevelopment

- 7.3.1. Further to Section 7.2, I consider that the overlooking issue contributes to the development comprising overdevelopment of the site.
- 7.3.2. The minimum private open space area cited in the South Dublin County Council Development Plan 2016-2022 for a three-bedroom house is 60sqm. The Plan states that private open space should be located behind the front building line. The 'Proposed Ground Floor Plan' drawing (Drawing No. 85656-PL-010) shows a combined private open space provision of 121.5sqm. This area appears to include every part of the non-building footprint in four different areas of the site and includes the car parking area, substantial planter areas and some external site boundary walls. The car parking/courtyard has an area of 39.9sqm but, given its primary use as a car parking area, I do not consider that it can be considered as usable private open space. Having regard to Drawing No. 85656-PL-010 I consider that private open space of approx. 60sqm is provided in three fragmented locations of varying usability.
- 7.3.3. The Site Layout Plan drawing (Drawing No. 85656-PL-001) shows the house footprint constructed immediately adjacent to all boundaries of the site. Though it is noted that it is single-storey in scale to the west and northern boundaries it is two-storey in scale onto the eastern and southern boundaries. There is a first-floor overhang above the proposed south courtyard which is, effectively, constructed to the public footpath. While 60sqm private open space may have been provided in total, the north-east courtyard area is less than 3 metres in width and is located between a two-storey building and boundary walls and the south courtyard, 1.2 metres wide, is located immediately below the overhanging first floor.
- 7.3.4. I consider that the fragmented private open space locations and their usability, the fact that the house is constructed onto all site boundaries, as well as the overlooking issue in Section 7.2, results in an overdevelopment of the site. I note, given the land under the applicants' control, that there is scope to increase the site area allocated for a proposed house which would not unduly impact on the residential amenity of the existing house within the applicants' ownership.

7.4. Surface Water Disposal

- 7.4.1. The grounds of appeal refer specifically to Condition 3 (d) of the planning authority decision and the inability to comply with the separation distances cited.
- 7.4.2. I consider that the issue of appropriate surface water discharge could be subject of a compliance condition for agreement on this issue with the planning authority.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location remote from and with no hydrological pathway to any European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that the planning application be refused for the following reason and consideration.

9.0 Reasons and Considerations

1. Having regard to the scale of the proposed house which is constructed onto all four site boundaries, the above ground floor windows and the fragmented provision of private open space areas of limited usability, it is considered that the proposed development by reason of its scale and design would constitute overdevelopment of the site area, would result in undue overlooking impact onto the private open space areas of adjoining properties and would result in inadequate private open space provision for residents. The proposed development would, therefore, seriously injure the amenities of the area and

would be contrary to the proper planning and sustainable development of the area.

Anthony Kelly

Planning Inspector

24.02.2020